



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date **OCT 25 2004**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Pakistan who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was admitted into the United States as a J1 nonimmigrant exchange visitor in June 1996. His J1 status was subsequently extended on a yearly basis through June 30, 2003. The applicant's J1 nonimmigrant exchange visitor status expired on June 30, 2003, and he is presently out of status. On November 30, 2001, the applicant married a Kenyan citizen who was also present in the United States as a J1 nonimmigrant exchange visitor. The record reflects that the applicant's wife's J1 nonimmigrant exchange visitor status also expired on June 30, 2003. The applicant and his wife had a U.S. citizen daughter on August 17, 2002. The applicant presently seeks a waiver of his two-year foreign residence requirement in Pakistan, based on the claim that his U.S. citizen daughter will suffer exceptional hardship if she lives in Pakistan for two years or if she is separated from the applicant for two years.¹

The director concluded the applicant had failed to establish that his daughter would suffer exceptional hardship if she moved to Pakistan with the applicant, or if she remained with her mother for two years while the applicant fulfilled his J1 foreign residence requirement in Pakistan. The application was denied accordingly.

Counsel asserts on appeal that the evidence contained in the record establishes that the applicant's daughter will suffer exceptional emotional hardship if the applicant returns to Pakistan for two years.

Section 212(e) of the Act states in pertinent part that:

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, [s]hall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency . . . or of the Commissioner of Immigration and

¹ The AAO notes the applicant's claim that he is entitled to lawful permanent residence in the U.S. pursuant to a family-based immigrant petition filed on the applicant's behalf by his U.S. citizen parents.

Naturalization [now, Citizenship and Immigration Services, CIS] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest. . . And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals (Board) stated that, "[t]emporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)".

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board stated:

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "It is believed to be detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers, including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from this country would cause personal hardship."

Counsel asserts that country conditions and U.S. Department of State (DOS) Travel Warnings establish that, as a U.S. citizen, the applicant's daughter's life would be in danger in Pakistan. Counsel additionally asserts that Pakistani health and educational facilities are inferior to those of the United States, and that the applicant would earn less money with which to provide for his daughter, than in the United States. Counsel also indicates that the applicant's career as a doctor would be disrupted if he moved temporarily to Pakistan, and that his life would be in danger in Pakistan because he is a Shi'a doctor. Counsel indicates further that the applicant's U.S. citizen parents would suffer exceptional hardship if they were separated from the applicant.² In addition, counsel asserts that the applicant's daughter would suffer exceptional emotional hardship if she remained with her mother and moved to Kenya while her father fulfills his J1 requirements in Pakistan and her mother fulfills her own J1 two-year foreign residence requirement in Kenya.

² The AAO notes that only hardship to a U.S. citizen or lawful resident alien spouse or child may be considered for section 212(e) waiver purposes. The AAO will therefore not consider any hardship to the applicant or to the applicant's parents.

The AAO notes that the DOS Travel Warnings referred to by counsel refer primarily to danger faced by official U.S. Embassy and Consulate employees and their families in Pakistan. Moreover, the general civilian travel warning essentially state that anti-American sentiment exists in Pakistan, and that for precautionary safety reasons, U.S. citizens in Pakistan should be aware of their surroundings, and should keep a low profile, avoid crowds and demonstrations, vary their travel routes, and avoid situations where their cars may be approached. The AAO notes that the DOS precautions implicitly refer to U.S. citizens who stand out as American and who are interacting meaningfully or independently within Pakistan. The evidence in the present case fails to establish that the applicant's two-year-old daughter would stand out as an American, or that she would be meaningfully or independently engaged in the types of activities referred to in the DOS travel warnings.

The AAO finds further that the record contains no evidence to indicate that the applicant's daughter has healthcare needs that cannot be effectively treated in Pakistan. Nor does the record establish that the applicant's daughter is old enough to attend school, or that she would be unable to receive an education in Pakistan once she reaches school age. The AAO notes that the record also fails to establish that the applicant would be unable to obtain work to support his daughter in Pakistan, either in the medical profession or otherwise. The AAO notes that although the applicant submitted a December 17, 2002, Amnesty International memorandum indicating that Shi'a health professionals have been targeted and killed in Pakistan, the record contains no other country condition reports to establish that this is an ongoing or widespread phenomenon, or to corroborate the information in the memorandum.

The applicant has also failed to establish that his daughter would suffer exceptional hardship due the necessity of a temporary separation from her father. The AAO finds the claim that the applicant and his wife must fulfill their J1 foreign residence requirements at the same time, and must therefore necessarily be separated from one another, to be unconvincing and unsupported by the record. Moreover, even if the applicant established that his daughter would necessarily be separated from him, the AAO finds that the child separation anxiety information submitted by the applicant is general in nature and does not constitute probative evidence regarding the applicant's daughter's situation.

Accordingly, the AAO finds that the evidence contained in the record fails to establish that the applicant's daughter would suffer hardship beyond that normally suffered by family members if she is temporarily separated from her father. The AAO finds further that the applicant has failed to establish that his daughter would suffer exceptional hardship if she moved to Pakistan with the applicant.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.